

### **REMARKS**

Applicant thanks the Examiner for the Interview held on January 18, 2005 and for indicating that the cited paragraphs of the references do not explicitly teach translating collected service performance information into a generic output, as recited in claims 1 and 18.

Claims 1-20 are pending. By this amendment, claims 2, 11, 12, 14, 20, and 21 are amended to correct typographical errors, and new claim 23 is added. No new matter is introduced. Support for the amendments can be found at least in Figures 3 and 4 and their accompanying description. Support for the new claim can be found at least at page 8, lines 1-2 of the specification. Reconsideration and allowance of the claims in view of the above amendments and the remarks that follow are respectfully requested.

### **Claim Objections**

Claims 12, 14, and 20 are objected to because of informalities. Claims 12, 14, and 20 have been amended to correct the informalities. Withdrawal of the objection of claims 12, 14, and 20 are respectfully requested.

### **Claim Rejections Under 35 U.S.C. §102**

On page 3 the Office Action rejects claims 1, 3-4, 5-6, 8, 11, and 14 under 35 U.S.C. § 102(e) over U.S. Patent 7,738,811 to Liang (hereafter Liang). Specifically, with respect to claim 1, the Office Action asserts on pages 3-4 that “[t]he fact that data is transmitted from data network (100) to monitoring server (114) and sever (114) can conclude a status condition of the registered servers (Col 5, lines 31-33), implies that the collected service performance was translated into a generic output.” This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic Research & Foundation v. Genentech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Liang is directed to a health diagnostic system capable of monitoring the health condition of computing device on a network. However, contrary to the Office Action’s assertion, Liang does not disclose or suggest “translating the collected service performance information into a generic output,” as recited in claim 1 (emphasis added). Liang recites. at column 5, lines 31-33: “[b]ased on a set of criteria for each of the registered servers, server

114 concludes a status condition respectively for each of the registered servers.” Liang’s system merely concludes a status condition. Liang’s system does not translate any collected service performance information, let alone translating the collected information into a generic output, which are a consistent set of health metrics that can be accessed by end consumers. The specification of the present application describes the “generic output” at, for example, page 7, line 28 to page 8, line 2: “[t]he health generator 10 transforms the performance information 12 into a consistent set of health metrics 14 that can be accessed by end consumer 13.” The translating step is performed by data analysis engine 125 using rule set 127 (see Figure 4 and its accompanying description). As an example, if an ARM agent average response time is collected as service performance information, that data is translated into the generic output “Service Time” shown in Figure 2. See page 13, lines 11-16.

As noted above, Liang does not disclose or suggest translating collected service performance information into a generic output. Therefore, claim 1 is allowable.

Claims 3-4, 5-6, and 8 are allowable at least because they depend from allowable claim 1 and for the additional features they recite.

Regarding claim 11, for the same reason as noted above with respect to claim 1, Liang does not disclose or suggest “a data analysis engine that translates the collected service health information using a health generation algorithm and provides one or more generic health metrics,” as recited in amended claim 11 (emphasis added). Therefore, amended claim 11 is allowable.

Claim 14 is allowable at least because it depends from allowable claim 11 and for the additional features it recites. Withdrawal of the rejection of claims 1, 3-4, 5-6, 8, 11, and 14 under 35 U.S.C. §102(e) is respectfully requested.

On page 6 the Office Action rejects claims 18-19 and 21-22 under 35 U.S.C. § 102(e) over U.S. Published Application 2002/0049687 to Helsper et al. (hereafter Helsper). Specifically, with respect to claim 18, the Office Action asserts on page 6 that Helsper teaches “translating the collected service and external performance information according to a health generation algorithm to generate a generic service health output (Paragraph [0008], lines 14-16, Paragraph [0011], lines 1-4)”. This rejection is respectfully traversed.

Helsper is directed to a method and system for computing a performance forecast for an e-business system to proactively manage the system to prevent system failure. Helsper recites at Paragraph [0008], lines 14-16 and Paragraph [0011], lines 1-3, respectively, “[t]he forecasting system automatically implements a regression analysis to compute a forecast for each output variable as a function of each input variable,” and “[t]he performance forecasting

system allows these extrinsic variables to be factored into the regression analysis used to predict near-term system traffic and performance levels.” Nowhere does Helsper disclose or suggest “translating the collected service and external performance information according to a health generation algorithm to generate a generic service health output,” as recited in claim 18. As noted above with respect to claim 1, a generic output is a consistent set of health metrics that can be accessed by end consumer. Helsper does not translate collected service performance information to such generic output. Therefore, claim 18 is allowable over Helsper.

Claim 19 is allowable at least because it depends from allowable claim 18 and for the additional features it recites.

Regarding claim 21, for the same reason as noted above with respect to claims 1 and 18, Helsper does not disclose or suggest “a health generator module that applies a rule set to the received performance information and derives generic health metrics therefrom,” as recited in amended claim 21. Therefore, amended claim 21 is allowable.

Claim 22 is allowable at least because it depends from allowable claim 21 and for the additional features it recites. Withdrawal of the rejection of claims 18-19 and 21-22 under 35 U.S.C. §102(e) is respectfully requested.

#### **Claim Rejections Under 35 U.S.C. §103**

On page 8 the Office Action rejects claims 2, 9, 10, 12, and 13 under 35 U.S.C. § 103(a) over Liang in view of Helsper. This rejection is respectfully traversed.

Claims 2, 9, and 10 are allowable at least because they depend from allowable claim 1 and for the additional features they recite. Claims 12 and 13 are allowable at least because they depend from allowable claim 11 and for the additional features they recite. Withdrawal of the rejection of claims 2, 9, 10, 12, and 13 under 35 U.S.C. §103(a) is respectfully requested.

On page 11 the Office Action rejects claim 20 under 35 U.S.C. § 103(a) over Helsper in view of U.S. Patent 6,446,123 to Ballantine et al. (hereafter Ballantine). This rejection is respectfully traversed.

Ballantine is directed to a software tool for monitoring network performance, traffic, inventory, breakdown, repair activity, and other conditions. The tool alerts a user to anticipated problems based upon projection of performance and related data. However, Ballantine does not cure Helsper’s defect and does not disclose “translating the collected service and external performance information according to a health generation algorithm to

generate a generic service health output,” as recited in claim 18. Therefore, claim 18 is allowable over Helsper and Ballantine.

Claim 20 is allowable at least because it depend from allowable claim 18 and for the additional features it recites. Withdrawal of the rejection of claim 20 under 35 U.S.C. §103(a) is respectfully requested.

On page 13 the Office Action rejects claims 7 and 15 under 35 U.S.C. § 103(a) over Liang in view of U.S. Patent 5,949,976 to Chappelle (hereafter Chappelle). This rejection is respectfully traversed.

Chappelle is directed to a computer system performance monitoring and graphing tool system. The system collects performance data from computer system with various operating systems, converts the performance data to graphical representations, stores the graphical representations in a database, and provides on-demand displaying of the graphical representations of the performance data. However, Chappelle does not cure Liang’s defect and does not disclose “translating the collected service performance information into a generic output,” as recited in claim 1. Therefore, claim 1 is allowable over Liang and Chappelle. Claim 11 recites similar features and is allowable over Liang and Chappelle.

Claims 7 and 15 are allowable at least because they depend from allowable claims 1 and 11, respectively, and for the additional features they recite. Withdrawal of the rejection of claims 7 and 15 under 35 U.S.C. §103(a) is respectfully requested.

On page 14 the Office Action rejects claim 16 under 35 U.S.C. § 103(a) over Liang in view of U.S. Patent 6,647,413 to Walrand et al. (hereafter Walrand) and High Performance Communication Networks. This rejection is respectfully traversed.

Walrand is directed to a method and apparatus for measuring performance in packet-switched networks. However, Walrand and High Performance Communication Networks do not cure Liang’s defect and does not disclose “a data analysis engine that translates the collected service health information using a health generation algorithm and provides one or more generic health metrics,” as recited in amended claim 11. Therefore, amended claim 11 is allowable over these references.

Claim 16 is allowable at least because it depends from allowable claim 11 and for the additional features it recites. Withdrawal of the rejection of claim 16 under 35 U.S.C. §103(a) is respectfully requested.

#### **New Claim 23 is Allowable**

New claim 23 is allowable at least because it depends from allowable claim 1 and for the additional features it recites. For example, none of the references disclose or suggest “the


generic output is a consistent set of health metrics that can be accessed by an end consumer," as recited in new claim 23.

In view of the above remarks, Applicant respectfully submits that the application is in condition for allowance. Prompt examination and allowance are respectfully requested.

Per discussion with the Examiner on January 18, 2005, please call Applicant's undersigned representative at the telephone number listed below before issuing a Final Office Action.

Respectfully submitted,

Date: January 21, 2005

  
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